

**KIRSCH, Judge**

Andrew Clinton Barker appeals the trial court's revocation of his probation. He raises two issues, which we address one: whether the trial court properly revoked Barker's probation.<sup>1</sup>

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On October 19, 2004, Barker pled guilty to manufacturing methamphetamine<sup>2</sup> as a Class B felony. The trial court sentenced him to six years, all suspended to probation, and consecutive to a previously ordered probation.<sup>3</sup> Three months later, a petition to revoke Barker's probation was filed alleging Barker committed theft of anhydrous ammonia and resisting law enforcement. Thereafter, the trial court held a hearing on the petition. Barker admitted the allegations, and the trial court revoked his probation and placed him on home detention probation.

Three months later, a petition to revoke Barker's home detention probation was filed for his use of alcohol. Three more petitions were filed before a hearing on the original petition was heard. The petitions alleged that Barker used alcohol and marijuana, failed to pay his home detention probation fees, failed to stay within his home monitoring range without consent on numerous occasions, and refused to submit to a

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<sup>1</sup> Barker also claims that trial court erred in allowing evidence of his methamphetamine use. He claims that the issue before the trial court should have been "what sanction should be imposed based on the findings that [Barker] utilized cannabinoids, consumed alcohol, failed to provide a sample for a chemical test, and violated terms of home detention." *Appellant's Br.* at 12. The trial court acknowledged that his use of methamphetamine cannot be used to sustain a finding of a violation since the State did not plead it as a violation in support of his revocation. *Tr.* at 7. Since we and the trial court accept Barker's argument, we need not address the issue.

<sup>2</sup> *See* IC 35-48-4-1.

<sup>3</sup> Barker's previous conviction was under Cause No. 36C01-0311-FD-313.

drug screen, all in violation of the conditions of his probation.

On April 27, 2006, the trial court held a hearing on these petitions, and Barker acknowledged all of the alleged violations. The trial court revoked Barker's home detention probation and ordered him to serve his suspended six-year sentence. Barker now appeals the revocation of his probation.

### **DISCUSSION AND DECISION**

Barker claims that the trial court abused its discretion by revoking his home detention probation and reinstating his entire suspended sentence.

When reviewing an appeal from the revocation of probation, we consider only the evidence most favorable to the judgment, and we will not reweigh the evidence or judge the credibility of the witnesses. *Sanders v. State*, 825 N.E.2d 952, 957 (Ind. Ct. App. 2005), *trans. denied*. Probation is a favor granted by the State, not a criminal defendant's right. *Id.* However, once the State grants that favor, it cannot simply revoke the privilege at its discretion. *Id.* Because probation revocation does not deprive a defendant of his absolute liberty, but only his conditional liberty, he is not entitled to the full due process rights afforded to a defendant in a criminal proceeding. *Piper v. State*, 770 N.E.2d 880, 882 (Ind. Ct. App. 2002), *trans. denied*.

Probation revocation is a two-step process. *Sanders*, 825 N.E.2d at 957. First, the court must make a factual determination that the probationer violated a probation condition. *Id.* If a violation is proven, then the trial court must determine if the violation warrants revocation of the probation. *Id.* Indiana has codified the due process requirements for probation revocation proceedings through IC 35-38-2-3, which requires

an evidentiary hearing on the revocation and allows the probationer to confront and cross-examine opposing witnesses, and to be represented by counsel. *Id.*; *see also* IC 35-38-2-3(d), (e). When a probationer admits to the violations, the procedural due process safeguards and an evidentiary hearing are not necessary. *Id.* Instead, the court can proceed to the second step of the inquiry and determine whether the violation warrants revocation. *Id.* In making the determination of whether the violation warrants revocation, the probationer must be given an opportunity to present evidence that explains and mitigates his violation. *Id.*

Here, Barker admitted he violated several terms of his probation. We, therefore, move to the second step of our analysis to determine whether the violations warrant a revocation. We do so with Barker's suggested framing of the issue: whether the revocation is warranted based on the findings that Barker utilized cannabinoids, consumed alcohol, failed to provide a sample for a chemical test, and violated the terms of home detention. In doing so, we find Barker's violations supported the trial court's order that Barker serve his suspended sentence.

Barker was sentenced to six years for a Class B felony, all of which was suspended to probation. He violated that probation and was placed on home detention probation. Barker then violated his home detention probation numerous times. The trial court stated it best when it said an individual should "understand the extreme break that he got when he was given the opportunity to serve his time on home detention rather than be incarcerated." *Tr.* at 44. Contrary to Barker's assertion that he should not receive a six-year sentence for merely a little use of alcohol and marijuana, his sentence was for a

Class B felony, the manufacturing of methamphetamine. *Id.* The violations sufficiently warranted the revocation of Barker's probation. The trial court did not abuse its discretion.

Affirmed.

RILEY, J., and FRIEDLANDER, J., concur.